

ST 99-2

Tax Type: SALES TAX

Issue: Organizational Exemption From Use Tax (Charitable)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

"COOPERATIVE OF WORKING
STIFFS",

APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No: 97-ST-0000

Sales Tax Exemption

Robert C. Rymek
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Gary Stutland for the Illinois Department of Revenue and Mr. Walter J. Kendall III for the "Cooperative of Working Stiffs".

SYNOPSIS: The "Cooperative of Working Stiffs" (hereinafter "COWS" or the "applicant") applied to the Illinois Department of Revenue (hereinafter the "Department") for an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of Use and related taxes as set forth in 35 ILCS 105/1 *et seq.* On October 9, 1996, the Department denied "COW's" application. "COWS" protested the Department's denial and requested a formal hearing.

The sole issue to be determined at the hearing was whether "COWS" qualifies for an exemption identification number as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable *** or educational purposes[.]" 35 ILCS 105/3-5(4). Following a careful review of all the evidence presented at the hearing, I recommend that the Department's tentative denial of

exemption be reversed and that the applicant be granted an exemption identification number.

FINDINGS OF FACT

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Tentative Denial of Exemption. Department Ex. No. 1.
2. The applicant was incorporated in February of 1996 under the General Not for Profit Corporation Act of Illinois. App. Ex. No. 1.
3. The applicant's Articles of Incorporation provide that the applicant was generally organized "for charitable, educational and religious purposes." App. Ex. No. 1.
4. Applicant's Articles of Incorporation, further provide that the applicant was organized for the specific purposes of "educat[ing] and involv[ing] the religious community on issues and campaigns that will improve wages, benefits, and working conditions for low-wage workers." App. Ex. No. 1.
5. The applicant's by-laws provide that membership is open to any individual or religious organization "concerned about worker justice issues." App. Ex. No. 2.
6. The applicant has approximately 8,000 members. Tr. p. 53.
7. The applicant's by-laws do not require members to pay any fees. However, members are asked for contributions. App. Ex. No. 2; Tr. p. 54.
8. The applicant's Board of Directors is comprised almost entirely of religious leaders from a wide variety of faiths including the Catholic, Jewish, Islamic, and Methodist faiths. Tr. p. 30.
9. The applicant engages in various activities relating to improving working conditions and wages for low-wage workers. Tr. pp. 26, 29, 36, 59, 62-64.

10. There are two main activities in which the applicant organization engages: (1) the production and dissemination of publications on workers' rights; and (2) visiting various employers to examine working conditions and discussing those conditions with the employers. App. Ex. Nos. 3, 6, 7, 8, 9; Dept. Ex. No. 3; Tr. pp. 19-24, 29, 36.
11. The applicant produces a number of publications including:
 - (a) a bimonthly newsletter (App. Ex. No. 6);
 - (b) a labor day weekend worship guide (App. Ex. No. 7);
 - (c) a fact-finding report detailing the applicant's review of a poultry plant (App. Ex. No. 8);
 - (d) a workers' rights manual (App. Ex. No. 9); and
 - (e) a study guide for religious groups which discusses worker justice issues (Dept. Ex. No. 3).
12. The applicant provides its publications to anyone who asks and makes its publications "copy ready" so that anyone can duplicate them. Tr. p. 59.
13. In 1997, the applicant had income of \$306,107 and expenses of \$331,379. Dept. Ex. No. 2.
14. Applicant's income came primarily from the following sources:
 - a) Foundations 39.9%
 - b) Religious organizations 28.3%
 - c) Unions 20.7%
 - d) Individuals 8.3%Dept. Ex. No. 2.
15. Applicant's expenses consisted primarily of the following:
 - a) Salaries 45.2%

- b) Travel 10.1%
- c) Printing and publications 6.8%
- d) Insurance 5.7%

Dept. Ex. No. 2; App. Ex. No. 5.

16. The applicant's Executive Director receives an annual salary of approximately \$36,000 per year. App. Ex. No. 5; Tr. p. 66.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant the granting of a sales tax exemption number. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be reversed. In support thereof, I make the following conclusions:

Although the applicant does have some ties to various religious organizations, the applicant is *not* seeking a sales tax exemption number on the basis of being a religious organization. Rather, the applicant seeks to qualify for a sales tax exemption identification number as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable *** purposes[.]" 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11).¹

Before turning to an analysis of whether the applicant qualifies for a charitable exemption, it is necessary to set forth the applicable standard of proof. The taxpayer bears the burden of proving, by "clear and convincing" evidence, that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231

¹ The word exclusively, when used in tax exemption statutes, means "primarily." Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987).

(2nd Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In analyzing whether the applicant qualifies for an exemption as a charitable organization under Illinois law, it is noted that the applicant’s amended articles of incorporation provide, *inter alia*, that the applicant was organized for charitable purposes. However, merely because an organization’s governing legal documents provide that it is organized for charitable purposes does not relieve the organization of the burden of proving it actually operates as a charitable institution. See Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

In Methodist Old People's Home, our supreme court set forth five factors to be considered in assessing whether an organization is actually an institution of public charity. According to Methodist Old People's Home, institutions of public charity: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home, *supra* at 157. These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the State’s burden. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

Applying the guidelines from Methodist Old People's Home to the instant case, I note first that the applicant has no stock or shareholders. App. Ex. Nos. 1, 2. Second, the applicant earns no profits or dividends but rather derives its funding mainly from public and private charity. Dept. Ex. No. 2. Third, the applicant does not dispense charity only to its members, but rather to all who need and apply for it. Tr. p. 59. Fourth, there is nothing in the record to suggest that the applicant provides gain or profit in a private sense to any person connected with it². Dept. Ex. No. 2; App. Ex. No. 5; Tr. p. 66. Finally, the applicant makes its publications and programs available to anyone and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Tr. p. 59.

Based upon the above application of the factors set forth in Methodist Old People's Home, the applicant would, at first blush, appear to be a charitable institution which should qualify for a sales tax exemption number. Nevertheless, the Department argues that the applicant should not qualify for the exemption number because the applicant: (1) undertakes no charitable “giving” other than through the dissemination of its publications; and (2) is a union funded movement which advances union interests. Tr. p. 74-75.

The Department fails to cite any statute, regulation, or case law, which suggests charity occurs only where an organization provides money or tangible physical property. Moreover, I am unaware of any legal authority supporting that proposition. In fact, it has traditionally been held that “charity” is not confined to mere almsgiving. Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108 (1919). Rather,

² Although the applicant’s Executive Director received a salary of \$36,000 per year (Tr. p. 66) this salary is not so high that it raises questions as to whether the Executive Director is the primary beneficiary of the applicant’s activities. See Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 662 (1st Dist. 1992).

“charity is a gift to be applied *** for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare – or in some way reducing the burdens of government.” Methodist Old People's Home *supra* at 156-157.

The applicant’s services promoting safer work environments and better working conditions for low-income individuals are clearly designed to help improve the general welfare of those in need. Cf. National Right to Work Legal Defense and Education Foundation, Inc. v. United States, 487 F.Supp. 801, 805-809 (E.D. N. Car. 1979) (court exempted applicant from taxation as a charitable organization, noting that the right to work is a fundamental right and that the applicant organization’s purpose was “to take all legitimate action to further the defense of the rights of workers who are suffering legal injustice as a result of employment discrimination...”). Thus, I conclude that the applicant is primarily engaged in charitable activities despite the fact that the applicant’s activities do not involve almsgiving.

With regard to the applicant’s union ties, I note that the Department is correct in asserting that the applicant is funded by unions and has interests, which in many cases parallel the interests of unions. Under certain circumstances, such ties could certainly be interpreted as suggesting the applicant was simply an agent of the unions as opposed to an independent charitable organization. However, such circumstances are not present in the case at hand. Here, the applicant’s Board of Directors is comprised almost entirely of religious leaders as opposed to union personnel. Tr. p. 30. Moreover, the applicant’s funding comes primarily from foundations and secondarily from religious organizations while union donations finish a distant third as a funding source. Dept. Ex. No. 2. Moreover, although some of applicant’s publications do mention unions, a review of these publications *in toto* reveals that their primary purpose does not appear to be to

promote the interests of union members. See App. Ex. Nos. 6, 7, 8, 9; Dept. Ex. No. 3.³ Rather, the primary focus of the applicant's publications appears to be on encouraging religious organizations to work to improve the working conditions of non-union workers, with unionizing simply mentioned as one possible method of helping achieve that goal. *Id.*

In conclusion, the applicant qualifies as a charitable institution under the general guidelines set forth in Methodist Old People's Home, *supra*. The fact that applicant's charitable activities involve the provision of services and publications as opposed to monetary donation does not alter that result. Moreover, although the applicant's union ties initially raise questions as to whether the applicant is simply an agent of the union, that does not appear to be the case because: (1) the applicant's directors are religious leaders as opposed to union leaders; (2) the applicant's publications appear to be primarily designed toward helping improve the working conditions of *non-unionized* workers; and (3) unions are not the primary or even the secondary source of funding for the applicant.

WHEREFORE, for the reasons set forth above, I recommend that the Department's tentative determination denying the applicant a sales tax identification number be reversed and that the applicant be granted a sales tax exemption number.

Date

Robert C. Rymek
Administrative Law Judge

³ App. Ex. Nos. 6 and 8 mention unions only in an extremely cursory manner. App. Ex. No. 7 is the applicant's strongest pro-union publication, which contains considerable discussion of how to incorporate union participation in religious services. App. Ex. No. 9 devotes approximately 4% of its pages to discussing the right to unionize. Dept. Ex. No. 3 devotes approximately 10% of its discussion to unions.